

# EXHIBIT 5

<p style="text-align: right;">Page 118</p> <p>1 calendars, it has our visit information. It's got all  2 the patient information, insurance information.  3 Q. So post-April 2020, you're dealing with MBR, and they  4 get information, they see that a patient came into the  5 office and met with a physician assistant and that  6 it's being billed under your number. Did you discuss  7 with MBR the circumstances under which that could be  8 done and not be done?  9 A. I did not, no.  10 Q. Okay. And how would MBR know whether you were  11 available by phone or teleconference post-April 2020  12 or whether you were just not available?  13 A. Because I can't think of a single time when I wasn't  14 available during a clinic.  15 Q. But that's not the question. The question is how did  16 MBR know if you were available?  17 A. I didn't tell them I wasn't ever available [sic].  18 Q. So the assumption on their end would just be you're  19 available?  20 A. Correct.  21 Q. Okay. So Epic is an electronic medical record system,  22 correct?  23 A. Yes.  24 Q. Okay. And does Epic include your office calendar?  25 A. It includes -- what do you mean?</p>	<p style="text-align: right;">Page 120</p> <p>1 on the calendar?  2 A. I'm assuming they put it on the calendar.  3 Q. You would have expected them to do that, I assume?  4 A. Yes.  5 Q. And so I assume Epic did not have access to your  6 office calendar, your Microsoft -- is it a Microsoft  7 calendar?  8 A. Yeah.  9 Q. Okay. They didn't have access to that, did they?  10 A. I'm not sure.  11 Q. Okay. So after the COVID regulations changed, did you  12 issue any written statements to your office?  13 A. Regarding what?  14 MR. BREAUH: Can I just object to form?  15 When you say COVID changing, from pre-COVID --  16 MS. GORDON: These regs --  17 MR. BREAUH: -- to COVID or --  18 MS. GORDON: -- these regs.  19 MR. BREAUH: -- COVID to post?  20 MS. GORDON: Yeah.  21 MR. BREAUH: Okay.  22 MS. GORDON: COVID's now over --  23 MR. BREAUH: Okay.  24 MS. GORDON: -- as to the regs, we're going  25 back to our normal.</p>
<p style="text-align: right;">Page 119</p> <p>1 Q. I didn't understand that Epic is just the medical  2 records side, correct?  3 A. Yeah, the entire patient care database --  4 Q. Okay.  5 A. -- of calendars and --  6 Q. Okay.  7 A. -- patient visit, and billing, and everything.  8 Q. And what's your office calendar? What do you use to  9 calendar vacations, other things that are going on  10 with you, when you're in, when you're out?  11 A. The office managers keep an office calendar on  12 Microsoft Office or Outlook or whatever it is.  13 Q. Okay. And is that where you would document your time  14 out of the office for vacation or professional  15 activities you have to attend to, things like that?  16 Would that be --  17 A. We can tell them when we're gone.  18 Q. Okay. You decide to tell, you decide to do the  19 telling. I'm looking for some way they could document  20 when you were in the office and out and plan for your  21 schedule, like, okay, we're gone for two weeks here.  22 I assume that was on the calendar?  23 A. If we were on vacation, the office managers were aware  24 that we were on vacation.  25 Q. I know, I didn't ask you that, but were they -- was it</p>	<p style="text-align: right;">Page 121</p> <p>1 BY MS. GORDON:  2 Q. Did you issue anything to your office?  3 A. Did I issue anything to my office? Such as?  4 Q. Okay. We now have to be back to the old way, we now  5 have to be back where I have to be on premises?  6 A. There were discussions with Simrath. Simrath was  7 preparing for this for a year in advance, like  8 contacting Epic, trying to get these physician  9 assistant numbers or billing capabilities. There were  10 many, many, many emails back and forth of us trying to  11 make this ready for COVID regulations to end.  12 Q. Well, what was so necessary that COVID -- how would --  13 what was changing from your world? It sounds like you  14 didn't have much to change.  15 A. I don't know what you mean by what was changing in my  16 world.  17 Q. Well, what were all the emails between Simrath and the  18 billers to get ready for this? What were you  19 referring to there?  20 A. The -- that the regulations were going to change in  21 terms of how billing must be handled from the four  22 years of COVID regulations, 2020, 2021, 2022, and  23 2023, for four years, we had these COVID regulations  24 where we were going to have to go back to billing  25 incident-to at the start of 2024. Or 2023? At the</p>

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<p style="text-align: right;">Page 122</p> <p>1 start of 2024, and so we had to be prepared for this</p> <p>2 change in our billing changes.</p> <p>3 Q. Well, what was the change in your billing practices</p> <p>4 that had to occur? What was going to be different?</p> <p>5 A. That I had to be in the building in order for the</p> <p>6 incident-to criteria to be met.</p> <p>7 Q. And, therefore, what? How did that affect billing?</p> <p>8 Did they have to have some notation that you were in</p> <p>9 the building?</p> <p>10 A. That Simrath, if we weren't in the building, would</p> <p>11 bill for the physician assistant, and if we were in</p> <p>12 the building, we could bill for incident-to.</p> <p>13 Q. Okay. So then during that four-year period, Simrath</p> <p>14 had been directed that whether you're in the building</p> <p>15 or not in the building, it should be billed under your</p> <p>16 name, the visit should be billed under your name?</p> <p>17 A. If we were available by phone or some kind of</p> <p>18 telecommunication.</p> <p>19 Q. Well, was that in writing to Simrath, or was it just</p> <p>20 whether you're in the building or not?</p> <p>21 A. It was not in writing to Simrath.</p> <p>22 Q. Okay. So I mean you're saying there's a lot of</p> <p>23 communications back and forth to straighten this out,</p> <p>24 I'm paraphrasing you, but it sounds like it was pretty</p> <p>25 simple once the COVID regulations ended, you just told</p>	<p style="text-align: right;">Page 124</p> <p>1 correct that there were times when there were</p> <p>2 incident-to billings when you were not on premises?</p> <p>3 A. No.</p> <p>4 Q. You're a hundred percent sure of that? You're not,</p> <p>5 are you?</p> <p>6 A. I'm a hundred percent sure. There was no physician</p> <p>7 assistant in the building seeing patients when I</p> <p>8 wasn't there, and so incident-to would be billed in</p> <p>9 every instance --</p> <p>10 Q. Okay. How about on your wife's side?</p> <p>11 A. She never used a physician assistant before COVID.</p> <p>12 Q. Okay.</p> <p>13 A. My physician assistant, Alyssa Zarski, was only with</p> <p>14 me because when I was in the operating room, she came</p> <p>15 with me, and that's the days when Dr. Pensler would be</p> <p>16 in the office.</p> <p>17 Q. So -- okay, all right. Were there ever instructions</p> <p>18 to billers, MBR or Simrath, to bill for anything other</p> <p>19 than incident-to?</p> <p>20 A. Such as?</p> <p>21 Q. Such as anything different than that where you gave</p> <p>22 instructions? We've talked about you giving</p> <p>23 instructions to billers to bill for something other</p> <p>24 than incident-to.</p> <p>25 A. Not during COVID.</p>
<p style="text-align: right;">Page 123</p> <p>1 Simrath go back to the old way?</p> <p>2 A. No, because Epic was new to us as our billing</p> <p>3 software, and so it was not back to the same old way.</p> <p>4 We used Medical Billing Resources prior to COVID,</p> <p>5 which had a whole separate set of software, and we had</p> <p>6 to figure out how to bill through Epic because we had</p> <p>7 never done that before, and that included setting up</p> <p>8 billing for a nonphysician provider.</p> <p>9 Q. Okay. Prior to March of 2020, were there times when</p> <p>10 you would have billed on the basis of incident-to when</p> <p>11 you were not on premises?</p> <p>12 A. There was no physician assistant who saw patients</p> <p>13 without me being on premises prior to COVID.</p> <p>14 Q. I didn't ask that. I asked if there was any billing</p> <p>15 that was done when you were not on premises under your</p> <p>16 name?</p> <p>17 A. I guess I answered that because it wouldn't be</p> <p>18 possible to bill if I wasn't there and didn't see a</p> <p>19 patient.</p> <p>20 Q. Oh, it would -- it would be possible, you could</p> <p>21 definitely put a bill in, obviously, just calling it</p> <p>22 incident-to but you weren't in the building.</p> <p>23 A. I don't know what you're asking.</p> <p>24 Q. I'm asking because I -- if need be, we will get the</p> <p>25 records, but prior to 20 -- the COVID change, am I</p>	<p style="text-align: right;">Page 125</p> <p>1 Q. Okay. Did anyone in your office ever monitor the</p> <p>2 general -- the amount of billing being done by the</p> <p>3 doctor versus the PA? You must have looked at that at</p> <p>4 some point.</p> <p>5 A. I don't think so.</p> <p>6 Q. Well, you were concerned about maximizing your</p> <p>7 reimbursement, and I know this came up later because</p> <p>8 you made some comments to my client about you couldn't</p> <p>9 afford to bill at the PA rate. Correct?</p> <p>10 A. I think that statement -- are you asking me what I</p> <p>11 meant by that statement?</p> <p>12 Q. No.</p> <p>13 A. Okay.</p> <p>14 Q. I'm saying that was there ever any -- it sounds like</p> <p>15 there was analysis that you had some feel for the</p> <p>16 diminution in your net profit for the year based on</p> <p>17 how many PA billings under your numbers there were or</p> <p>18 under your number with a full reimbursement.</p> <p>19 A. I don't think that, according to the COVID rules, that</p> <p>20 we were mandated to take a physician assistant level</p> <p>21 of repayment or reimbursement rather than a physician</p> <p>22 level.</p> <p>23 Q. So during COVID, you just always took the physician</p> <p>24 level?</p> <p>25 A. From what we understood about the COVID rules, we were</p>

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